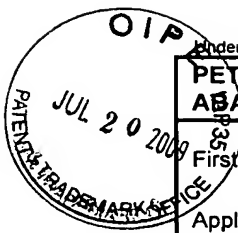


IFW DAC



**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
TEVNH C 3.0-587

First named inventor: Xian-Ming Zeng

Application No: 10/646,361-Conf. #8629

Art Unit: 1616

Filed: August 21, 2003

Examiner: K. M. George

Title: INHALATION COMPOSITIONS

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

- ☐ Small entity – fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.
- ☒ Other than small entity – fee \$ 1,620.00 (37 CFR 1.17(m))

2. Reply and/or fee

- A. The reply and/or fee to the above-noted Office action in the form of Notice of Appeal (identify type of reply):
- ☒ has been filed previously on August 19, 2008
- ☐ is enclosed herewith.
- B. The issue fee and publication fee (if applicable) of \$ _____
- ☐ has been paid previously on _____
- ☐ is enclosed herewith.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.


Signature

7/17/09
Date

Arnold H. Krumholz
Typed or printed name

25,428
Registration Number, if applicable

LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK,
LLP
600 South Avenue West
Westfield, New Jersey 07090
Address

(908) 518-6304
Telephone Number

Enclosures: ☒ Fee Payment

☐ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

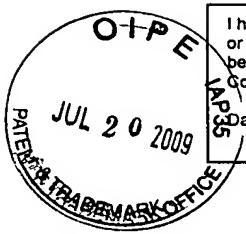
☐ Other: _____

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I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: 7/17/09

Signature:  (Arnold H. Krumholz)



I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: July 17, 2009

Signature:

(Arnold H. Krumholz)

Docket No.: TEVNHC 3.0-587
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Xian-Ming Zeng

Application No.: 10/646,361

Confirmation No.: 8629

Filed: August 21, 2003

Art Unit: 1616

For: INHALATION COMPOSITIONS

Examiner: K. M. George

REQUEST FOR WITHDRAWAL OF NOTICE OF ABANDONMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450


Dear Madam:

Applicants hereby petition for the revival of Application No. 10/646,361, if necessary, in view of the fact that this application has never actually been abandoned. That is, a non-final Official Action issued in this case on February 22, 2008. In response, however, applicants filed an Amendment under Rule 116, mistakenly referring to the amendment as a final rejection. Furthermore, although applicants' response to the February 22, 2008 Official Action was filed within the three-month response period, mistakenly believing that the Official Action was a final rejection, applicants nevertheless filed a Notice of Appeal on August 19, 2008. Subsequently, applicants' attorney discussed this matter with the Examiner, who indicated that the application would be considered not to have been abandoned based on applicants' filing a request for withdrawal of the Notice of Appeal and refund of the appeal and extension fees. This paper was filed on March 20, 2009, and received in the U.S. Patent and Trademark

Office on March 23, 2009. However, these documents were never filed in the Patent Office Information Retrieval System, and applicants received a Notice of Abandonment on June 25, 2009. It is clear, however, based on these facts and the accompanying Declaration of Arnold H. Krumholz, that the abandonment of this application was unintentional, and that in fact the application has never been abandoned. It is nevertheless requested that the Notice of Abandonment be withdrawn and the application be allowed to continue its course of prosecution. It is further requested that, in view of these facts, and that there never was any abandonment in this case, applicants also be refunded their petition fees filed in connection therewith.

Dated: July 17, 2009

Respectfully submitted,

By 

Arnold H. Krumholz

Registration No.: 25,428

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicant

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: July 17, 2009

Signature: 

(Arnold H. Krumholz)

Docket No.: TEVNHC 3.0-587
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Xian-Ming Zeng

Application No.: 10/646,361

Confirmation No.: 8629

Filed: August 21, 2003

Art Unit: 1616

For: INHALATION COMPOSITIONS

Examiner: K. M. George

DECLARATION OF ARNOLD H. KRUMHOLZ

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam:

I, Arnold H. Krumholz, declare as follows:

1. I am a partner in Lerner, David, Littenberg, Krumholz & Mentlik, LLP, 600 South Avenue West, Westfield, NJ 07090, attorneys for the applicants in the above-referenced pending U.S. patent application.

2. An Official Action issued in the above-referenced application on February 22, 2008. This Official Action was marked as a "Non-Final" rejection. On May 20, 2008, I prepared and filed an "Amendment under 37 C.F.R. 1.116" in this case, indicating that the Official Action of February 22, 2008, was a final rejection, which was clearly not the case. On August 19, 2008, a Notice of Appeal along with a Petition for Extension of Time was filed in this case.

3. On March 20, 2009, I discussed this application with Supervisory Examiner Johann R. Richter. After noting



during this discussion that the February 22, 2008 was a non-final rejection, and that therefore no Notice of Appeal was necessary, and that in fact no Petition for Extension of Time was necessary, since the Amendment dated May 20, 2008 was filed within the three-month response period, I prepared and filed a "Request for Withdrawal of Notice of Appeal and Refund of Appeal and Extension Fees," a copy of which is attached hereto as Exhibit A. Indeed, we subsequently received a postcard from the U.S. Patent and Trademark Office indicating that this paper had been filed on March 20, 2009, a copy of which is attached hereto as Exhibit B. Furthermore, in a paper dated April 1, 2009, we were advised by the Technical Center of their receipt of the refund request in this application (a copy of which is attached hereto as Exhibit C).

4. Nevertheless, in a paper dated June 25, 2009 applicants received a Notice of Abandonment in this case, indicating that the Notice of Appeal had been filed on August 22, 2008, and that the time for filing an appeal brief had expired.

5. On July 16, 2009, I again discussed this application with Supervisory Examiner Richter, who indicated that the Patent Office records (PAIR) did not indicate that a Request for Withdrawal of Notice of Appeal and Refund of Appeal and Extension Fees had been filed in this case. It is clear, however, that no Notice of Appeal was ever necessary in this case and that this application was never actually abandoned.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or

Application No.: 10/646,361

Docket No.: TEVNHC 3.0-587

imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: July 17, 2009

1042762_1.DOC


ARNOLD H. KRUMHOLZ

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: March 20, 2009

Signature:

(Arnold H. Krumholz)

Docket No.: TEVNHC 3.0-587
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Xian-Ming Zeng

Application No.: 10/646,361

Group Art Unit: 1616

Filed: August 21, 2003

Examiner: J. R. Richter

For INHALATION COMPOSITIONS

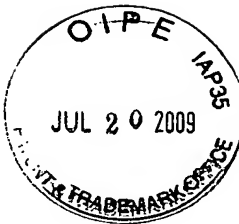
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR WITHDRAWAL OF NOTICE OF APPEAL
AND REFUND OF APPEAL AND EXTENSION FEES

Dear Madam:

In accordance with a telephone discussion between applicant's attorney and Supervisory Examiner Johann R. Richter on March 20, 2009, it is respectfully requested that the Notice of Appeal and Petition for Extension of Time filed by the applicant on May 20, 2009, be withdrawn. During that discussion it was determined that the Official Action dated February 22, 2008, was a non-final rejection, and that therefore applicant was not obligated to file a Notice of Appeal and accompanying Petition for Extension of Time in order to maintain the application. Furthermore, applicant's amendment dated May 20, 2008, was entered and was filed within the three-month period for response, so that no extension fees were required therefor.

It is therefore respectfully requested that the Notice of Appeal and Petition for Extension of Time filed on May 20, 2009, be withdrawn, and that the Appeal Fee of \$510.00 and Extension



Application No.: 10/646,361


Docket No.: TEVNHC 3.0-587

Fee of \$1,050.00 be refunded by crediting our Deposit Account No. 12-1095 in the amount of \$1,560.00.

If the Examiner has any questions concerning this matter, he is requested to call applicant's attorney at (908) 654-5000.

Dated: March 20, 2009

Respectfully submitted,

By 

Arnold H. Krumholz

Registration No.: 25,428

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

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PLEASE ACKNOWLEDGE RECEIPT BY RETURNING THIS CARD

Via: First Class Mail

Atty Docket No.: TEVNHC 3.0-587

Due Date:

Title: INHALATION COMPOSITIONS

Application No.: 10/646,361-Conf. #8629

Documents Filed:

Petition For Withdrawal Of Notice Of Appeal
And Request For Refund



Sender's Initials: AHK/jw
LD-539\

Mailing Date: March 23, 2009



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

April 1, 2009

ALLX
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK LLP
600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090
US

TECHNICAL 30-587

Dear Sir/Madam,

This is to acknowledge receipt of your refund request for 10646361 in the amount of \$1,560.00.

Your request has been forwarded to the Technical Center Others for review.

To inquire about the status of your refund request, please call 703-308-9010 x178.

Please allow four weeks from the date on this letter prior to your inquiry.

Thank you,

Technical Center Others

LDLK&M

APR 10 2009

RECEIVED